

# Senate Bill 256

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## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes requirements, unless parties agree otherwise, for motor vehicle liability arbitration proceedings.

## A BILL FOR AN ACT

1  
2 Relating to arbitration of motor vehicle liability disputes; creating new provisions; and amending  
3 ORS 742.504, 742.520 and 742.522.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS chapter 742.**

6 **SECTION 2. (1) Unless the parties agree otherwise, arbitration proceedings under ORS**  
7 **742.504 or 742.520 shall be conducted as follows:**

8 (a) **Parties to an arbitration proceeding shall submit the dispute to arbitration by a panel**  
9 **of three arbitrators. The panel shall consist of one arbitrator chosen by each party and one**  
10 **arbitrator chosen by the two arbitrators previously chosen to sit on the panel.**

11 (b) **An arbitration proceeding shall be conducted under local court rules in the county**  
12 **where the arbitration is held.**

13 (2) **Findings and awards made in an arbitration proceeding under this section:**

14 (a) **Are binding on the parties to the arbitration proceeding;**

15 (b) **Are not binding on any other party; and**

16 (c) **May not be used for the purpose of collateral estoppel.**

17 **SECTION 3. ORS 742.504 is amended to read:**

18 742.504. Every policy required to provide the coverage specified in ORS 742.502 shall provide  
19 uninsured motorist coverage that in each instance is no less favorable in any respect to the insured  
20 or the beneficiary than if the following provisions were set forth in the policy. However, nothing  
21 contained in this section requires the insurer to reproduce in the policy the particular language of  
22 any of the following provisions:

23 (1)(a) The insurer will pay all sums that the insured, the heirs or the legal representative of the  
24 insured is legally entitled to recover as general and special damages from the owner or operator  
25 of an uninsured vehicle because of bodily injury sustained by the insured caused by accident and  
26 arising out of the ownership, maintenance or use of the uninsured vehicle. Determination as to  
27 whether the insured, the insured's heirs or the insured's legal representative is legally entitled to  
28 recover such damages, and if so, the amount thereof, shall be made by agreement between the in-  
29 sured and the insurer, or, in the event of disagreement, may be determined by arbitration as pro-  
30 vided in subsection (10) of this section.

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (b) No judgment against any person or organization alleged to be legally responsible for bodily  
2 injury, except for proceedings instituted against the insurer as provided in this policy, shall be  
3 conclusive, as between the insured and the insurer, on the issues of liability of the person or or-  
4 ganization or of the amount of damages to which the insured is legally entitled.

5 (2) As used in this policy:

6 (a) "Bodily injury" means bodily injury, sickness or disease, including death resulting therefrom.

7 (b) "Hit-and-run vehicle" means a vehicle that causes bodily injury to an insured arising out of  
8 physical contact of the vehicle with the insured or with a vehicle the insured is occupying at the  
9 time of the accident, provided:

10 (A) The identity of either the operator or the owner of the hit-and-run vehicle cannot be ascer-  
11 tained;

12 (B) The insured or someone on behalf of the insured reported the accident within 72 hours to  
13 a police, peace or judicial officer, to the Department of Transportation or to the equivalent depart-  
14 ment in the state where the accident occurred, and filed with the insurer within 30 days thereafter  
15 a statement under oath that the insured or the legal representative of the insured has a cause or  
16 causes of action arising out of the accident for damages against a person or persons whose identities  
17 are unascertainable, and setting forth the facts in support thereof; and

18 (C) At the insurer's request, the insured or the legal representative of the insured makes avail-  
19 able for inspection the vehicle the insured was occupying at the time of the accident.

20 (c) "Insured," when unqualified and when applied to uninsured motorist coverage, means:

21 (A) The named insured as stated in the policy and any person designated as named insured in  
22 the schedule and, while residents of the same household, the spouse of any named insured and rel-  
23 atives of either, provided that neither the relative nor the spouse is the owner of a vehicle not de-  
24 scribed in the policy and that, if the named insured as stated in the policy is other than an  
25 individual or husband and wife who are residents of the same household, the named insured shall  
26 be only a person so designated in the schedule;

27 (B) Any child residing in the household of the named insured if the insured has performed the  
28 duties of a parent to the child by rearing the child as the insured's own although the child is not  
29 related to the insured by blood, marriage or adoption; and

30 (C) Any other person while occupying an insured vehicle, provided the actual use thereof is with  
31 the permission of the named insured.

32 (d) "Insured vehicle," except as provided in paragraph (e) of this provision, means:

33 (A) The vehicle described in the policy or a newly acquired or substitute vehicle, as each of  
34 those terms is defined in the public liability coverage of the policy, insured under the public liability  
35 provisions of the policy; or

36 (B) A nonowned vehicle operated by the named insured or spouse if a resident of the same  
37 household, provided that the actual use thereof is with the permission of the owner of the vehicle  
38 and the vehicle is not owned by nor furnished for the regular or frequent use of the insured or any  
39 member of the same household.

40 (e) "Insured vehicle" does not include a trailer of any type unless the trailer is a described ve-  
41 hicle in the policy.

42 (f) "Occupying" means in or upon or entering into or alighting from.

43 (g) "Phantom vehicle" means a vehicle that causes bodily injury to an insured arising out of a  
44 motor vehicle accident that is caused by a vehicle that has no physical contact with the insured or  
45 the vehicle the insured is occupying at the time of the accident, provided:

1 (A) The identity of either the operator or the owner of the phantom vehicle cannot be ascer-  
2 tained;

3 (B) The facts of the accident can be corroborated by competent evidence other than the testi-  
4 mony of the insured or any person having an uninsured motorist claim resulting from the accident;  
5 and

6 (C) The insured or someone on behalf of the insured reported the accident within 72 hours to  
7 a police, peace or judicial officer, to the Department of Transportation or to the equivalent depart-  
8 ment in the state where the accident occurred, and filed with the insurer within 30 days thereafter  
9 a statement under oath that the insured or the legal representative of the insured has a cause or  
10 causes of action arising out of the accident for damages against a person or persons whose identities  
11 are unascertainable, and setting forth the facts in support thereof.

12 (h) "State" includes the District of Columbia, a territory or possession of the United States and  
13 a province of Canada.

14 (i) "Stolen vehicle" means an insured vehicle that causes bodily injury to the insured arising  
15 out of a motor vehicle accident if:

16 (A) The vehicle is operated without the consent of the insured;

17 (B) The operator of the vehicle does not have collectible motor vehicle bodily injury liability  
18 insurance;

19 (C) The insured or someone on behalf of the insured reported the accident within 72 hours to  
20 a police, peace or judicial officer or to the equivalent department in the state where the accident  
21 occurred; and

22 (D) The insured or someone on behalf of the insured cooperates with the appropriate law  
23 enforcement agency in the prosecution of the theft of the vehicle.

24 (j) "Uninsured vehicle," except as provided in paragraph (k) of this provision, means:

25 (A) A vehicle with respect to the ownership, maintenance or use of which there is no collectible  
26 motor vehicle bodily injury liability insurance, in at least the amounts or limits prescribed for bodily  
27 injury or death under ORS 806.070 applicable at the time of the accident with respect to any person  
28 or organization legally responsible for the use of the vehicle, or with respect to which there is  
29 collectible bodily injury liability insurance applicable at the time of the accident but the insurance  
30 company writing the insurance denies coverage or the company writing the insurance becomes vol-  
31 untarily or involuntarily declared bankrupt or for which a receiver is appointed or becomes insol-  
32 vent. It shall be a disputable presumption that a vehicle is uninsured in the event the insured and  
33 the insurer, after reasonable efforts, fail to discover within 90 days from the date of the accident,  
34 the existence of a valid and collectible motor vehicle bodily injury liability insurance applicable at  
35 the time of the accident.

36 (B) A hit-and-run vehicle.

37 (C) A phantom vehicle.

38 (D) A stolen vehicle.

39 (k) "Uninsured vehicle" does not include:

40 (A) An insured vehicle, unless the vehicle is a stolen vehicle;

41 (B) A vehicle that is owned or operated by a self-insurer within the meaning of any motor ve-  
42 hicle financial responsibility law, motor carrier law or any similar law;

43 (C) A vehicle that is owned by the United States of America, Canada, a state, a political sub-  
44 division of any such government or an agency of any such government;

45 (D) A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for

1 use as a residence or premises and not as a vehicle;

2 (E) A farm-type tractor or equipment designed for use principally off public roads, except while  
3 actually upon public roads; or

4 (F) A vehicle owned by or furnished for the regular or frequent use of the insured or any  
5 member of the household of the insured.

6 (L) "Vehicle" means every device in, upon or by which any person or property is or may be  
7 transported or drawn upon a public highway, but does not include devices moved by human power  
8 or used exclusively upon stationary rails or tracks.

9 (3) This coverage applies only to accidents that occur on and after the effective date of the  
10 policy, during the policy period and within the United States of America, its territories or pos-  
11 sessions, or Canada.

12 (4)(a) This coverage does not apply to bodily injury of an insured with respect to which the in-  
13 sured or the legal representative of the insured shall, without the written consent of the insurer,  
14 make any settlement with or prosecute to judgment any action against any person or organization  
15 who may be legally liable therefor.

16 (b) This coverage does not apply to bodily injury to an insured while occupying a vehicle, other  
17 than an insured vehicle, owned by, or furnished for the regular use of, the named insured or any  
18 relative resident in the same household, or through being struck by the vehicle.

19 (c) This coverage does not apply so as to inure directly or indirectly to the benefit of any  
20 workers' compensation carrier, any person or organization qualifying as a self-insurer under any  
21 workers' compensation or disability benefits law or any similar law or the State Accident Insurance  
22 Fund Corporation.

23 (d) This coverage does not apply with respect to underinsured motorist benefits unless:

24 (A) The limits of liability under any bodily injury liability insurance applicable at the time of  
25 the accident regarding the injured person have been exhausted by payment of judgments or settle-  
26 ments to the injured person or other injured persons;

27 (B) The described limits have been offered in settlement, the insurer has refused consent under  
28 paragraph (a) of this subsection and the insured protects the insurer's right of subrogation to the  
29 claim against the tortfeasor;

30 (C) The insured gives credit to the insurer for the unrealized portion of the described liability  
31 limits as if the full limits had been received if less than the described limits have been offered in  
32 settlement, and the insurer has consented under paragraph (a) of this subsection; or

33 (D) The insured gives credit to the insurer for the unrealized portion of the described liability  
34 limits as if the full limits had been received if less than the described limits have been offered in  
35 settlement and, if the insurer has refused consent under paragraph (a) of this subsection, the insured  
36 protects the insurer's right of subrogation to the claim against the tortfeasor.

37 (e) When seeking consent under paragraph (a) or (d) of this subsection, the insured shall allow  
38 the insurer a reasonable time in which to collect and evaluate information related to consent to the  
39 proposed offer of settlement. The insured shall provide promptly to the insurer any information that  
40 is reasonably requested by the insurer and that is within the custody and control of the insured.  
41 Consent will be presumed to be given if the insurer does not respond within a reasonable time. For  
42 purposes of this paragraph, a "reasonable time" is no more than 30 days from the insurer's receipt  
43 of a written request for consent, unless the insured and the insurer agree otherwise.

44 (5)(a) As soon as practicable, the insured or other person making claim shall give to the insurer  
45 written proof of claim, under oath if required, including full particulars of the nature and extent of

1 the injuries, treatment and other details entering into the determination of the amount payable  
2 hereunder. The insured and every other person making claim hereunder shall submit to examinations  
3 under oath by any person named by the insurer and subscribe the same, as often as may reasonably  
4 be required. Proof of claim shall be made upon forms furnished by the insurer unless the insurer fails  
5 to furnish the forms within 15 days after receiving notice of claim.

6 (b) Upon reasonable request of and at the expense of the insurer, the injured person shall submit  
7 to physical examinations by physicians selected by the insurer and shall, upon each request from the  
8 insurer, execute authorization to enable the insurer to obtain medical reports and copies of records.

9 (6) If, before the insurer makes payment of loss hereunder, the insured or the legal represen-  
10 tative of the insured institutes any legal action for bodily injury against any person or organization  
11 legally responsible for the use of a vehicle involved in the accident, a copy of the summons and  
12 complaint or other process served in connection with the legal action shall be forwarded imme-  
13 diately to the insurer by the insured or the legal representative of the insured.

14 (7)(a) The limit of liability stated in the declarations as applicable to "each person" is the limit  
15 of the insurer's liability for all damages because of bodily injury sustained by one person as the  
16 result of any one accident and, subject to the above provision respecting each person, the limit of  
17 liability stated in the declarations as applicable to "each accident" is the total limit of the compa-  
18 ny's liability for all damages because of bodily injury sustained by two or more persons as the result  
19 of any one accident.

20 (b) Any payment made under this coverage to or for an insured shall be applied in reduction  
21 of any amount that the insured may be entitled to recover from any person who is an insured under  
22 the bodily injury liability coverage of this policy.

23 (c) Any amount payable under the terms of this coverage because of bodily injury sustained in  
24 an accident by a person who is an insured under this coverage shall be reduced by:

25 (A) All sums paid on account of the bodily injury by or on behalf of the owner or operator of  
26 the uninsured vehicle and by or on behalf of any other person or organization jointly or severally  
27 liable together with the owner or operator for the bodily injury, including all sums paid under the  
28 bodily injury liability coverage of the policy; and

29 (B) The amount paid and the present value of all amounts payable on account of the bodily in-  
30 jury under any workers' compensation law, disability benefits law or any similar law.

31 (d) Any amount payable under the terms of this coverage because of bodily injury sustained in  
32 an accident by a person who is an insured under this coverage shall be reduced by the credit given  
33 to the insurer pursuant to subsection (4)(d)(C) or (D) of this section.

34 (e) The amount payable under the terms of this coverage may not be reduced by the amount of  
35 liability proceeds offered, described in subsection (4)(d)(B) or (D) of this section, that has not been  
36 paid to the injured person. If liability proceeds have been offered and not paid, the amount payable  
37 under the terms of the coverage shall include the amount of liability limits offered but not accepted  
38 due to the insurer's refusal to consent. The insured shall cooperate so as to permit the insurer to  
39 proceed by subrogation or assignment to prosecute the claim against the uninsured motorist.

40 (8) No action shall lie against the insurer unless, as a condition precedent thereto, the insured  
41 or the legal representative of the insured has fully complied with all the terms of this policy.

42 (9)(a) With respect to bodily injury to an insured:

43 (A) While occupying a vehicle owned by a named insured under this coverage, the insurance  
44 under this coverage is primary.

45 (B) While occupying a vehicle not owned by a named insured under this coverage, the insurance

1 under this coverage shall apply only as excess insurance over any primary insurance available to  
2 the occupant that is similar to this coverage, and this excess insurance shall then apply only in the  
3 amount by which the applicable limit of liability of this excess coverage exceeds the sum of the  
4 applicable limits of liability of all primary insurance available to the occupant.

5 (b) If an insured is an insured under other primary or excess insurance available to the insured  
6 that is similar to this coverage, then the insured's damages are deemed not to exceed the higher of  
7 the applicable limits of liability of the additional primary or excess insurance available to the in-  
8 sured, and the insurer is not liable under this coverage for a greater proportion of the insured's  
9 damages than the applicable limit of liability of this coverage bears to the sum of the applicable  
10 limits of liability of this insurance and other primary or excess insurance available to the insured.

11 (c) With respect to bodily injury to an insured while occupying any motor vehicle used as a  
12 public or livery conveyance, the insurance under this coverage shall apply only as excess insurance  
13 over any other insurance available to the insured that is similar to this coverage, and this insurance  
14 shall then apply only in the amount by which the applicable limit of liability of this coverage ex-  
15 ceeds the sum of the applicable limits of liability of all other insurance.

16 (10) If any person making claim hereunder and the insurer do not agree that the person is le-  
17 gally entitled to recover damages from the owner or operator of an uninsured vehicle because of  
18 bodily injury to the insured, or do not agree as to the amount of payment that may be owing under  
19 this coverage, then, in the event the insured and the insurer elect by mutual agreement at the time  
20 of the dispute to settle the matter by arbitration, the arbitration shall take place [*under the arbi-*  
21 *tration laws of the State of Oregon or, if the parties agree, according to any other procedure*] **as de-**  
22 **scribed in section 2 of this 2007 Act.** Any judgment upon the award rendered by the arbitrators  
23 may be entered in any court having jurisdiction thereof, provided, however, that the costs to the  
24 insured of the arbitration proceeding do not exceed \$100 and that all other costs of arbitration are  
25 borne by the insurer. "Costs" as used in this provision does not include attorney fees or expenses  
26 incurred in the production of evidence or witnesses or the making of transcripts of the arbitration  
27 proceedings. The person and the insurer each agree to consider themselves bound and to be bound  
28 by any award made by the arbitrators pursuant to this coverage in the event of such election. At  
29 the election of the insured, the arbitration shall be held:

30 (a) In the county and state of residence of the insured;

31 (b) In the county and state where the insured's cause of action against the uninsured motorist  
32 arose; or

33 (c) At any other place mutually agreed upon by the insured and the insurer.

34 (11) In the event of payment to any person under this coverage:

35 (a) The insurer shall be entitled to the extent of the payment to the proceeds of any settlement  
36 or judgment that may result from the exercise of any rights of recovery of the person against any  
37 uninsured motorist legally responsible for the bodily injury because of which payment is made;

38 (b) The person shall hold in trust for the benefit of the insurer all rights of recovery that the  
39 person shall have against such other uninsured person or organization because of the damages that  
40 are the subject of claim made under this coverage, but only to the extent that the claim is made or  
41 paid herein;

42 (c) If the insured is injured by the joint or concurrent act or acts of two or more persons, one  
43 or more of whom is uninsured, the insured shall have the election to receive from the insurer any  
44 payment to which the insured would be entitled under this coverage by reason of the act or acts  
45 of the uninsured motorist, or the insured may, with the written consent of the insurer, proceed with

1 legal action against any or all persons claimed to be liable to the insured for the injuries. If the  
 2 insured elects to receive payment from the insurer under this coverage, then the insured shall hold  
 3 in trust for the benefit of the insurer all rights of recovery the insured shall have against any other  
 4 person, firm or organization because of the damages that are the subject of claim made under this  
 5 coverage, but only to the extent of the actual payment made by the insurer;

6 (d) The person shall do whatever is proper to secure and shall do nothing after loss to prejudice  
 7 such rights;

8 (e) If requested in writing by the insurer, the person shall take, through any representative not  
 9 in conflict in interest with the person, designated by the insurer, such action as may be necessary  
 10 or appropriate to recover payment as damages from such other uninsured person or organization,  
 11 such action to be taken in the name of the person, but only to the extent of the payment made  
 12 hereunder. In the event of a recovery, the insurer shall be reimbursed out of the recovery for ex-  
 13 penses, costs and attorney fees incurred by the insurer in connection therewith; and

14 (f) The person shall execute and deliver to the insurer any instruments and papers as may be  
 15 appropriate to secure the rights and obligations of the person and the insurer established by this  
 16 provision.

17 (12)(a) The parties to this coverage agree that no cause of action shall accrue to the insured  
 18 under this coverage unless within two years from the date of the accident:

19 (A) Agreement as to the amount due under the policy has been concluded;

20 (B) The insured or the insurer has formally instituted arbitration proceedings;

21 (C) The insured has filed an action against the insurer; or

22 (D) Suit for bodily injury has been filed against the uninsured motorist and, within two years  
 23 from the date of settlement or final judgment against the uninsured motorist, the insured has  
 24 formally instituted arbitration proceedings or filed an action against the insurer.

25 (b) For purposes of this subsection:

26 (A) "Date of settlement" means the date on which a written settlement agreement or release is  
 27 signed by an insured or, in the absence of these documents, the date on which the insured or the  
 28 attorney for the insured receives payment of any sum required by the settlement agreement. An  
 29 advance payment as defined in ORS 31.550 shall not be deemed a payment of a settlement for pur-  
 30 poses of the time limitation in this subsection.

31 (B) "Final judgment" means a judgment that has become final by lapse of time for appeal or by  
 32 entry in an appellate court of an appellate judgment.

33 **SECTION 4.** ORS 742.520 is amended to read:

34 742.520. (1) Every motor vehicle liability policy issued for delivery in this state that covers any  
 35 private passenger motor vehicle shall provide personal injury protection benefits to the person in-  
 36 sured thereunder, members of that person's family residing in the same household, children not re-  
 37 lated to the insured by blood, marriage or adoption who are residing in the same household as the  
 38 insured and being reared as the insured's own, passengers occupying the insured motor vehicle and  
 39 pedestrians struck by the insured motor vehicle.

40 (2) Personal injury protection benefits apply to a person's injury or death resulting:

41 (a) In the case of the person insured under the policy and members of that person's family re-  
 42 siding in the same household, from the use, occupancy or maintenance of any motor vehicle, except  
 43 the following vehicles:

44 (A) A motor vehicle, including a motorcycle or moped, that is owned or furnished or available  
 45 for regular use by any of such persons and that is not described in the policy;

1 (B) A motorcycle or moped which is not owned by any of such persons, but this exclusion applies  
 2 only when the injury or death results from such person's operating or riding upon the motorcycle  
 3 or moped; and

4 (C) A motor vehicle not included in subparagraph (A) or (B) of this paragraph and not a private  
 5 passenger motor vehicle. However, this exclusion applies only when the injury or death results from  
 6 such person's operating or occupying the motor vehicle.

7 (b) In the case of a passenger occupying or a pedestrian struck by the insured motor vehicle,  
 8 from the use, occupancy or maintenance of the vehicle.

9 (3) Personal injury protection benefits consist of payments for expenses, loss of income and loss  
 10 of essential services as provided in ORS 742.524.

11 (4) An insurer shall pay all personal injury protection benefits promptly after proof of loss has  
 12 been submitted to the insurer.

13 (5) The potential existence of a cause of action in tort does not relieve an insurer from the duty  
 14 to pay personal injury protection benefits.

15 (6) Disputes between insurers and beneficiaries about the amount of personal injury protection  
 16 benefits, or about the denial of personal injury protection benefits, shall be decided by arbitration  
 17 if mutually agreed to at the time of the dispute. **Arbitration under this subsection shall take**  
 18 **place as described in section 2 of this 2007 Act.**

19 (7) An insurer:

20 (a) May not enter into or renew any contract that provides, or has the effect of providing,  
 21 managed care services to beneficiaries.

22 (b) May enter into or renew any contract that provides evaluation services for beneficiaries.

23 **SECTION 5.** ORS 742.522 is amended to read:

24 *742.522. [(1) Arbitration under ORS 742.520 (6) is binding on the parties to the arbitration.]*

25 [(2)] (1) Costs to the insured of the arbitration proceeding **under ORS 742.520 (6)** shall not ex-  
 26 ceed \$100 and all other costs of arbitration shall be borne by the insurer.

27 (2) As used in this [subsection] **section**, "costs" does not include attorney fees or expenses in-  
 28 curred in the production of evidence or witnesses or the making of transcripts of the arbitration  
 29 proceedings.

30 **SECTION 6. Section 2 of this 2007 Act and the amendments to ORS 742.504, 742.520 and**  
 31 **742.522 by sections 3 to 5 of this 2007 Act apply to motor vehicle liability policies issued or**  
 32 **renewed on or after the effective date of this 2007 Act.**